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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.4738/2019**

SHABIR AHMAD BHAT

.... Petitioner

Through: Mr. Shadan Farasat, Ms. Rudrakshi
Deo & Ms.Hafsa Khan, Advocates

versus

UPSC & ORS.

..... Respondents

Through: Mr. Naresh Kaushik & Mr. Omung
Gupta, Advocates for Respondent
No.1/UPSC
Ms. Padma Priya, Advocate for
Respondent No.2/NIAH
Mr. Satyendra Kumar, Mr. Amit
Sinha & Mr.A.S.Singh, Advocates for
Respondent No.3

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE REKHA PALLI

ORDER

06.05.2019

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1. This petition challenges an order dated 22nd April, 2019 passed by the Central Administrative Tribunal (CAT), Principal Bench in MA No. 1253/2019 in OA No. 843/2019 (*Rajat Varshney vs. Union Public Service Commission*). Challenge is also laid to an order dated 13th March, 2019 passed by the CAT in the same OA No. 843/2019.

2. The background facts are that the Petitioner as well as Respondent No.2 Shri Rajat Varshney applied for the post of Assistant Director, in the general category, in the C.C.S National Institute of Animal Health (NIAH), Baghpat,

UP. The selection was conducted by the Union Public Service Commission (UPSC). While Respondent No.2 who secured 68 marks was on top of the list, the Petitioner secured 65 marks and was in the Wait List (WL) as No.1.

3. As part of the screening process for the purposes of being called for the interview, the UPSC insisted that the candidate should possess a Ph.D degree. According to the Petitioner, the certificate produced by Respondent No.2 showed that he got the Ph.D degree only on 31st July, 2018 and not as of the cut off date i.e. 18th May, 2018. He accordingly challenged the selection of Respondent No.2 before the CAT by filing O.A. No. 356 of 2019, impleading Respondent No.2 as such. Notice was issued in the said application by the CAT on 31st January 2019 but no interim relief was granted.

4. On 26th February 2019, the UPSC cancelled the candidature of Respondent No.2 on the above ground. On 27th February 2019, the Department of Animal Husbandary and Dairying (DAHD), Ministry of Agriculture and Farmer's Welfare, Government Of India issued a letter offering the Petitioner, who was WL-1, the above post of Assistant Director.

5. At that stage, Respondent No.2 approached the CAT with OA No.843/2019 in which petition he only made the UPSC and Union of India as parties. Admittedly, he did not implead the present Petitioner as a party. In that petition on 13th March, 2019 an order was passed by the CAT noting the facts as presented by Respondent No.2. The CAT directed that "till further orders, one post of Assistant Director, shall not be filled".

6. Consequent upon the above interim order, the earlier offer made to the present Petitioner was withdrawn by the DAHD by a letter dated 26th March, 2019. A reference in that letter was made to the interim order dated 13th March, 2019 passed by the CAT in OA No. 843/2019.

7. The present Petitioner then filed MA No. 1253/2019 in OA No. 843/2019 seeking impleadment as a party Respondent. He also filed MA No. 1252/2019 for vacation of the interim order passed by the CAT on 13th March, 2019. These two applications were listed before the CAT on 22nd April, 2019. The CAT on that date passed the following order in MA No. 1253/2019:

“MA No. 1253/2019

This application is filed with a prayer to implead the applicant herein as one of the respondents in O.A. No. 843/2019. We would have certainly granted the prayer but for the fact that the applicant filed an independent O.A. bearing No. 356/2019. Since both the O.As, are being heard together, there is no necessity to file this MA. The MA is, accordingly, closed.”

8. OA 843 of 2019 was directed to be listed on 7th May 2019.

9. This Court has heard the submissions of Mr. Shadan Farasat, learned counsel for the Petitioner, Mr. Naresh Kaushik, learned counsel for Respondent No.1/UPSC, Ms. Padma Priya, learned counsel for Respondent No.2/NIAH and Mr. Satyendra Kumar, learned counsel for Respondent No.3.

10. It appears to the Court that the basic facts are not in dispute viz., that

there are two contestants for one vacancy in the general category in the post of Assistant Director. While Respondent No.2 was short listed on the basis of having secured 68 marks, the present Petitioner having secured 65 marks was kept in WL at No.1. It is also not in dispute that for the purposes of interview the UPSC insisted on the candidate having a Ph.D as of the cut off date 18th May 2018.

11. This Court does not wish to express any opinion on the respective contentions of the parties on whether Respondent No.2 did have a Ph.D as of the cut off date and was therefore rightly called for the interview and later selected. Those questions will be examined by the CAT in the two petitions pending before it.

12. The short question that arises is whether the present Petitioner is a necessary and proper party in OA No. 843/2019 filed by Respondent No.2? Without being impleaded as such in OA No. 843/2019 it is not possible for the CAT to entertain any prayer of the Petitioner for vacation/modification/variation of the interim order dated 13th March, 2019 passed in OA No. 843/2019. With the Petitioner being in WL -1 undoubtedly the said interim order has adversely affected his prospects. In fact it is an admitted position that only on account of the said interim order dated 13th March, 2019, the offer of appointment dated 27th February, 2019 made to the present Petitioner stood withdrawn by the subsequent letter dated 26th March, 2019 of the DAHD. Therefore, merely because the Petitioner has filed a separate OA No. 356/2019 which has been directed to be heard with OA No. 843/2019, it does not mean that the Petitioner is not a

necessary and proper party in OA No. 843/2019. It may be noted here that in his OA No. 356/2019 the Petitioner has impleaded Respondent No.2 as such.

13. In that view of the matter, this Court sets aside the impugned order dated 22nd April, 2019 passed by the CAT in MA No. 1253/2019 and directs that the present Petitioner will stand impleaded in OA No. 843/2019 as Respondent No.3. MA No. 1253/2019 in OA No. 843/2019 will be treated as having been allowed.

14. The CAT will now take up for hearing MA No. 1252/2019 filed by the present Petitioner in OA No. 843/2019 seeking vacation/modification of the interim order dated 13th March, 2019 passed by the CAT in said OA No. 843/2019.

15. It is clarified that nothing stated in the present order should be construed as an expression by this Court of any opinion on the merits in MA No. 1252/2019 which will be decided by the CAT on its own merit.

16. The petition is allowed in the above terms. Order be given *dasti* under the signatures of Court Master.

S. MURALIDHAR, J.

REKHA PALLI, J.

MAY 06, 2019/mw